



**The Commonwealth of Massachusetts**  
**DEPARTMENT OF**  
**TELECOMMUNICATIONS AND ENERGY**

MEMORANDUM

TO: Bay State Gas Company, D.T.E. 06-36 - Electronic Service List

FROM: Julie Howley Westwater, Hearing Officer

DATE: June 1, 2006

RE: Ruling on Petitions to Intervene

CC: Mary L. Cottrell, Secretary

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I. INTRODUCTION

On March 31, 2006, Bay State Gas Company ("Bay State" or "Company") filed a petition with the Department of Telecommunications and Energy ("Department") seeking approval of a proposal to implement an incremental capacity planning standard for grandfathered customers and approval of related modifications to Bay State Gas Company tariffs M.D.T.E. No. 35, Distribution and Default Service Terms and Conditions, and M.D.T.E. No. 36, Cost of Gas Adjustment Clause ("Petition"). The Company states that the Petition is in response to a Department directive to Bay State in Bay State Gas Company, D.T.E. 05-27 (2005), to submit for Department review, a proposal to monitor overtakes by grandfathered transportation customers. This case has been docketed as D.T.E. 06-36.

On May 1, 2006, the Department issued a Notice of Filing and Public Hearing ("Notice") that established a deadline of May 11, 2006 for petitions to intervene. Due to a delay by the Company in notifying marketers and grandfathered customers within the Bay State service territory of the filing and public hearing pursuant to the Department's Order of Notice, the hearing officer directed the Company to notify marketers and grandfathered customers that the deadline for intervention was extended from May 11, 2006, to May 17, 2006. The Company provided proof of said notification via an undated letter which the Company states was mailed to the marketers and grandfathered customers on May 8, 2006. On May 18, 2006, the Department held a public hearing during which the hearing officer extended the deadline for intervention and comment to May 25, 2006, to allow all interested parties an opportunity to participate in this proceeding (Tr. at 9).

On May 18, 2006, the Department also held a procedural conference. At the procedural conference, the hearing officer, pursuant to G.L. c. 12, § 11E, recognized the Attorney General as a full party in the proceeding (Tr. at 23). Without objection and pursuant to 220 C.M.R. § 1.03(1)(e), the hearing officer granted timely petitions filed by NSTAR Gas Company (“NSTAR Gas”), Fitchburg Gas and Electric Light Company d/b/a Unitil (“FG&E”), and KeySpan Energy Delivery New England (“KeySpan”), for limited participant status. NSTAR Gas, FG&E, and KeySpan were added to the service list and permitted to attend the public portion of any evidentiary hearing and technical conferences, receive copies of all pleadings, discovery requests and responses, and submit written comments and briefs (Tr. at 23-25). Additionally, pursuant to G.L. c. 30A, § 10 and 220 C.M.R. 1.03, the hearing officer granted timely petitions for full party status to Sprague Energy Corporation, Direct Energy Services LLC, Stiles & Hart Brick Company, and Hess Corporation (Tr. at 26).<sup>1</sup>

Subsequent to the public hearing and procedural conference but prior to the extended intervention deadline, the Department received petitions to intervene in this proceeding from Massachusetts Municipal Wholesale Electric Company (“MMWEC”) and The Berkshire Gas Company (“Berkshire”). Electronic copies of these petitions were emailed to the parties in D.T.E. 06-36 and the Department received no objections to either motion.

## II. STANDARD OF REVIEW

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); Boston Edison, 375 Mass. 1, 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. Boston Edison, 375 Mass. 1, 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. Id.

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<sup>1</sup> The hearing officer denied a request by Bay State to reserve the right for a day or two to object to the petition to intervene of Stiles and Hart Brick Company (Tr. at 25-26).

### III. PETITIONS TO INTERVENE

#### A. MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY

MMWEC argues that it is substantially and specifically affected because it transports natural gas over the Bay State system for use by MMWEC's Stony Brook Intermediate generating unit in Ludlow, Massachusetts (MMWEC Petition at 2). Bay State provides MMWEC firm transportation service for this purpose under a long-term gas transportation contract (*id.*). As a long-term firm transportation customer of Bay State, MMWEC argues that this proceeding may affect MMWEC's right and liabilities under its contract with Bay State, or otherwise affect the transportation of gas by MMWEC over Bay State's facilities (*id.*). In the alternative, MMWEC requests that it be allowed to participate in this proceeding as a limited participant with rights to receive copies of all pleadings, discovery requests and responses, and to file briefs in accordance with the procedural schedule established by the Department (*id.*).

#### RULING

The Department received no objection to MMWEC's petition to intervene. As a long-term firm transportation customer of Bay State, this proceeding may affect the transportation of gas by MMWEC over Bay State's facilities. Therefore, I grant MMWEC limited participant status in this proceeding, pursuant to 220 C.M.R. § 1.03(1)(e). MMWEC will be added to the service list and may attend the public portion of any evidentiary hearing and technical conferences, receive copies of all pleadings, discovery requests and responses, and submit written comments and briefs.

#### B. THE BERKSHIRE GAS COMPANY

Berkshire states that it is a gas company in Massachusetts that is regulated by the Department (Berkshire Petition at 1). Berkshire argues that the Department's investigation in this proceeding will address issues dealing with resource planning, ratemaking and other issues common to gas companies in Massachusetts, including Berkshire, and that Berkshire is likely to be substantially and specifically affected by the Department's finding with respect to these issues of common application (*id.*).

#### RULING

The Department received no objection to Berkshire's petition and this proceeding may raise issues that are common to other gas companies in Massachusetts. Therefore, I grant Berkshire limited participant status in this proceeding, pursuant to 220 C.M.R. § 1.03(1)(e). Berkshire will be added to the service list and may attend the public portion of any evidentiary hearing and technical conferences, receive copies of all pleadings, discovery requests and responses, and submit written comments and briefs.